

No. 17-1907

**United States Court of Appeals
for the Federal Circuit**

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
THE UNIVERSITY OF VIENNA, AND EMMANUELLE CHARPENTIER,
Appellants

v.

THE BROAD INSTITUTE, INC., MASSACHUSETTS
INSTITUTE OF TECHNOLOGY, AND PRESIDENT AND
FELLOWS OF HARVARD COLLEGE,
Appellees.

Appeal from the Patent Trial and Appeal Board
in Interference No. 106,048

JOINT MOTION FOR EXTENSION OF BRIEFING SCHEDULE

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*Counsel for Appellant
Emmanuelle Charpentier*

Pursuant to this Court's Rule 26(b), Appellants the Regents of the University of California, the University of Vienna, and Emmanuelle Charpentier, and Appellees the Broad Institute, Massachusetts Institute of Technology, and President and Fellows of Harvard College, jointly move for an extension of the briefing schedule as follows:

- **Appellants' opening brief** is currently due on June 26, 2017 (the Monday following Sunday, June 25, 2017). Appellants seek a 29-day extension of that due date to July 25, 2017.
- **Appellees' opening brief** is currently due on August 7, 2017, but will be due on September 4, 2017, if Appellants' extension is granted. Appellees seek a 51-day extension of that prospective September 4, 2017, due date to October 25, 2017.
- **Appellants' reply brief** is currently due on August 21, 2017, but will be due on November 8, 2017, if Appellants' opening brief extension and Appellees' responsive brief extension are granted. Appellants seek a 14-day extension

of that prospective November 8, 2017, due date to November 22, 2017.

Neither Appellants nor Appellees have requested any other extensions in this appeal.

As set forth in the declaration of Ginger D. Anders, good cause exists for Appellants' requested extension of the due dates for their briefs. The Appellants intend to file a single opening and single reply brief. The extension of the briefing schedule is necessary in order to allow sufficient time to prepare and file briefs addressing the extensive record in the case, as well as to allow sufficient time for consultation and review by multiple law firms.

The attorneys who will be responsible for drafting Appellants' brief have competing deadlines that will make it difficult to complete Appellants' opening brief by the current due date of June 26, 2017. Lead counsel Donald B. Verrilli, Jr. has prior commitments including (1) a June 8, 2017, oral argument in *VidAngel v. Disney Enterprises*, No. 16-56843 (9th Cir.), a complex case involving the scope of the Digital Millennium Copyright Act and the Family Movie Act; and (2) post-trial briefing and a to-be-scheduled oral argument in *Bahamas Surgery*

Center, LLC v. Kimberly-Clark Corp. and Halyard Health Inc., No. 2:14-cv-08390-DMG-PLA (C.D. Cal.), a case in which a jury awarded over \$100 million in punitive damages. Other matters in which Appellants' attorneys have upcoming deadlines include *FTC v. AbbVie Inc.*, No. 14-cv-5151 (E.D. Pa.) (summary judgment briefs due on June 5, July 10, and July 26); *In re AndroGel Antitrust Litigation (No. II)*, No. 09-md-2084 (N.D. Ga.) (two expert depositions to be scheduled between June 12 and July 10); *Steves and Sons, Inc. v. JELD-WEN Inc.*, No. 3:16-cv545 (E.D. Va.) (deposition discovery to be completed between May and July, and summary judgment briefing beginning in July); *Takeda v. Hikma*, No. 14-1268 (D. Del.) (infringement-phase discovery taking place over the summer); and *Comcast Cable Comm'ns LLC v. Sprint Spectrum, L.P.*, No. 2:12-cv-00859 (E.D. Pa.) (oral argument on multiple post-trial motions following infringement verdict likely to be scheduled in June or July).

As set forth in the declaration of Paul D. Margolis, good cause also exists for Appellees' requested extension of their responsive brief due date. Various counsel integrally involved in the appeal are unavailable in the relevant time period due to other matters and commitments.

Specifically, counsel who will play a major role in writing the response brief are involved in the following matters: (1) *Amgen, Inc., et al. v. Coherus Biosciences, Inc.*, No. 56-2017-00493553-CU-BT-VTA (CA, County of Ventura) for which there are numerous deadlines leading up to an expected preliminary injunction hearing in August or September 2017; (2) *Sanofi-Aventis U.S. LLC, et al. v. Merck Sharp & Dohme Corp.* (D. Del. C.A. No. 16-812-RGA), for which there are numerous deadlines between July and October 2017, including fact discovery, expert reports, expert depositions, dispositive motions, and claim construction briefing, as well as a claim construction hearing in September 2017; (3) *Nichia Corporation v. TCL Multimedia Technology Holdings, Ltd. et al* (D. Del. C.A. No. 16-681-RGA), for which claim construction briefs are due in Aug.-Oct. 2017, culminating in a claim construction hearing on Oct. 31, 2017; (4) a confidential proceeding, for which counsel has briefing due on September 8, 2017, and October 20, 2017; and (5) vacations scheduled in late August and early October.

For the foregoing reasons, Appellants and Appellees respectfully request that the Court grant them the requested extensions, such that Appellants' opening brief is due on July 25, 2017, Appellees' responsive

brief is due on October 25, 2017, and Appellants' reply brief is due on November 22, 2017.

The parties have discussed this joint motion. Counsel for Appellees does not oppose Appellants' proposed extension, and counsel for Appellants does not oppose Appellees' proposed extension. Neither party will file a response to this motion.

Respectfully submitted.

Dated: May 25, 2017

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Counsel for Appellees

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DECLARATION OF GINGER D. ANDERS

I, Ginger D. Anders, declare:

1. I am an attorney in the law firm of Munger, Tolles & Olson LLP, counsel for Appellants the Regents of the University of California and the University of Vienna in this case. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could competently testify to them.

2. Appellants have not previously requested an extension of time to file their opening brief or for any other reason in this case.

3. An extension of time for Appellants to file their opening brief is warranted because Appellants' attorneys have competing deadlines that will make it difficult to complete Appellants' opening brief by the current due date of June 26, 2017. For example, lead counsel Donald B. Verrilli, Jr. has oral argument on June 8, 2017, in *VidAngel v. Disney Enterprises*, No. 16-56843 (9th Cir.), a complex case involving the scope of the Digital Millennium Copyright Act and the Family Movie Act; and post-trial briefing and a to-be-scheduled oral argument in *Bahamas Surgery Center, LLC v. Kimberly-Clark Corp. and Halyard Health Inc.*, No. 2:14-cv-08390-DMG-PLA (C.D. Cal.), a case in which a jury awarded over \$100 million in punitive damages. Other matters in which Appellants' attorneys have upcoming deadlines include *FTC v. AbbVie Inc.*, No. 14-cv-5151 (E.D. Pa.) (summary judgment briefs due on June 5, July 10, and July 26); *In re AndroGel Antitrust Litigation (No. II)*, No. 09-md-2084 (N.D. Ga.) (two expert depositions to be scheduled between June 12 and July 10); *Steves and Sons, Inc. v. JELD-WEN Inc.*, No. 3:16-cv-545 (E.D. Va.) (deposition discovery to be completed between May and July, and summary judgment briefing beginning in July); *Takeda v. Hikma*, No. 14-1268 (D. Del.)

(infringement-phase discovery taking place over the summer); and *Comcast Cable Comm'ns LLC v. Sprint Spectrum, L.P.*, No. 2:12-cv-00859 (E.D. Pa.) (oral argument on multiple post-trial motions following infringement verdict likely to be scheduled in June or July).

4. The requested extension is necessary in order to allow sufficient time to prepare and file a brief addressing the extensive record in the case, as well as to allow sufficient time for review by multiple law firms.

5. I have conferred with Appellees' counsel about this joint motion for an extension of time. Appellees' counsel told me that they do not oppose the requested extension of Appellants' opening and reply brief deadlines.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: May 25, 2017

/s/ Ginger D. Anders
Ginger D. Anders

2017-1907

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UNITED STATES COURT OF APPEALS
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REGENTS OF THE UNIVERSITY OF CALIFORNIA, UNIVERSITY OF
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THE BROAD INSTITUTE, INC., MASSACHUSETTS INSTITUTE OF
TECHNOLOGY, AND PRESIDENT AND FELLOWS OF HARVARD
COLLEGE,

Appellees.

DECLARATION OF PAUL D. MARGOLIS

In support of the Motion for Extension of Time, and in accordance with
Federal Circuit Rule 26(b)(5), counsel states as follows:

1. I, Paul D. Margolis, am a partner at the law firm of Jenner &
Block, LLP, 353 N. Clark Street, Chicago, IL 60654. I am a member of the bar of
this Court and an attorney for Appellees, The Broad Institute, Inc., Massachusetts
Institute of Technology and President and Fellows of Harvard College
(collectively, “Broad”).

2. Broad is requesting an extension of time, up to and including October 25, 2017, within which to file its response brief. This is Broad's first request for an extension of time.

3. There is good cause for the requested extension of time, given the large number of other pressing matters to which Broad's counsel must attend.

4. The requested extension is required because various counsel integrally involved in the appeal are unavailable in the relevant time period due to other matters and commitments. Specifically, counsel who will play a major role in writing the response brief are involved in the following matters: (1) *Amgen, Inc., et al. v. Coherus Biosciences, Inc.*, No. 56-2017-00493553-CU-BT-VTA (CA, County of Ventura) for which there are numerous deadlines leading up to an expected preliminary injunction hearing in August or September 2017; (2) *Sanofi-Aventis U.S. LLC, et al. v. Merck Sharp & Dohme Corp.*, D. Del. C.A. No. 16-812-RGA, for which there are numerous deadlines between July and October 2017, including fact discovery, expert reports, expert depositions, dispositive motions, and claim construction briefing, as well as a claim construction hearing in September 2017; (3) *Nichia Corporation v. TCL Multimedia Technology Holdings, Ltd. et al* (D. Del. C.A. No. 16-681-RGA), for which claim construction briefs are due in Aug-Oct 2017, culminating in a claim construction hearing on Oct 31, 2017; (4) a confidential proceeding, for which counsel has briefing due on September 8,

2017, and October 20, 2017; and (5) vacations scheduled in late August and early October.

5. Counsel for Broad has contacted counsel for Appellants, who does not oppose and joins this motion for extension of time.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of May, 2017.

/s/ Paul D. Margolis

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Counsel for Appellees

The Broad Institute, Inc., Massachusetts

Institute of Technology and President

and Fellows of Harvard College

CERTIFICATE OF INTEREST

Counsel for Appellants Regents of the University of California and University of Vienna certifies the following:

1. The full name of every party represented by me is:

The Regents of the University of California

University of Vienna

2. The names of the real parties in interest represented by me are:

Not applicable

3. All parent corporations and any publicly held companies that own 10% or more of stock in the parties represented by me are:

Not applicable

4. The names of all law firms and the partners or associates that appeared for the parties now represented by me before the Patent Trial and Appeal Board or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

BUCHANAN INGERSOLL & ROONEY PC: Todd R. Walters, Erin M. Dunston, Travis W. Bliss, Christopher L. North

Dated: May 25, 2017

/s/ Ginger D. Anders
Ginger D. Anders

CERTIFICATE OF INTEREST

Counsel for Appellant Emmanuelle Charpentier certifies the following:

1. The full name of every party represented by me is:

Emmanuelle Charpentier

2. The names of the real party in interest represented by me is:

Not applicable

3. All parent corporations and any publicly held companies that own 10% or more of stock in the party represented by me are:

Not applicable

4. The names of all law firms and the partners or associates that appeared for the party now represented by me before the Patent Trial and Appeal Board or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

GOODWIN PROCTER LLP: Brian A. Fairchild, Carmella L. Stephens

Dated: May 25, 2017

/s/ Li-Hsien Rin-Laures
Li-Hsien Rin-Laures

CERTIFICATE OF INTEREST

Counsel for Appellees The Broad Institute, Inc., Massachusetts Institute of Technology, and President and Fellows of Harvard College certifies the following:

1. The full name of every party represented by me is:

The Broad Institute, Inc.

Massachusetts Institute of Technology

President and Fellows of Harvard College

2. The names of the real parties in interest represented by me are:

Not applicable

3. All parent corporations and any publicly held companies that own 10% or more of stock in the parties represented by me are:

Not applicable

4. The names of all law firms and the partners or associates that appeared for the parties now represented by me before the Patent Trial and Appeal Board or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

VEDDER PRICE PC: Thomas J. Kowalski, Deborah L. Lu

Dated: May 24, 2017

/s/ Paul D. Margolis

Paul D. Margolis

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system on May 25, 2017.

I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Ginger D. Anders
Ginger D. Anders